

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Modernizing the E-rate)	WC Docket No. 13-184
Program for Schools and Libraries)	

To: The Commission

**COMMENTS OF THE NAVAJO NATION TELECOMMUNICATIONS
REGULATORY COMMISSION (NNTRC)**

James E. Dunstan
Mobius Legal Group, PLLC
P.O. Box 6104
Springfield, VA 22150
Telephone: (703) 851-2843



Counsel to NNTRC

Brian Tagaban
Executive Director
P.O. Box 7740
Window Rock, AZ 86515
Telephone: (928) 871-7854

Kandis Martine
Navajo Nation Department of Justice
P.O. Box 2010
Window Rock, AZ 86515
Counsel to NNTRC

Dated: September 16, 2013

Summary

The Navajo Nation, through the Navajo Nation Telecommunications Regulatory Commission (NNTRC), applauds the FCC in undertaking this long overdue review of its regulations of the Schools and Libraries Program (“E-rate”). The NNTRC further applauds the FCC in specifically requesting input from Tribes as to the unique circumstances that impede Indian Country’s participation in the E-rate program.

First and foremost, the FCC must address what constitutes a “library” for purposes of E-rate support. For a Native Nation such as the Navajo, who’s language was not even written down until just over 150 years ago, and whose language lacked a formal alphabet until 1939, it should be of little surprise that its “libraries” may not look like traditional libraries. Indeed, there is only one formal library, located in Window Rock, AZ. That’s one library for a Native Nation the size of West Virginia. To augment its lone library, the Navajo Nation has designated its 110 Chapter Houses as auxiliary libraries. The Gates Foundation found that these Chapter Houses functioned as libraries and donated computers so that the Navajo Nation could begin participating in the E-rate Program. USAC determined in 2011, however, that these Chapter Houses didn’t “look” like traditional libraries, and therefore ruled that they were not eligible for E-rate support. The Navajo Nation has appealed these USAC decisions.

Under the current rules, Tribes are required to have their libraries certified by states. This requirement violates the sovereignty of Native Nations, who under the Constitution are recognized as having jurisdiction over internal affairs. The GAO pointed out this flaw in a 2006 study, which stems from a gap in statutory language which the FCC misinterpreted in 1997, and which has left many Tribes unable to get E-rate support for their libraries. Instead, the FCC should now modernize and modify its rules to recognize the rights of Tribes and the obligation

for government-to-government consultation at the federal level in determining what constitutes a library.

The *E-rate NPRM* further asks what unique circumstances exist in Indian Country that require a different approach for Tribes. The NNTRC submits that there are five factors present within its borders particularly and Indian Country generally that make participation in the E-rate program so difficult: 1) Lack of adequate physical infrastructure on reservations; 2) Difficulty in building anything in Indian Country because of complications with land status, rights of way, and building regulations; 3) Lack of engineering and technical resources available to tribes; 4) Lack of training in E-rate compliance; and 5) Lack of internal financial resources to solve the lack of technical, engineering, and regulatory compliance workforce in Indian Country. The situation of the Pine Hill Schools, located in the Ramah Chapter of the Navajo Nation underscores all of these problems. Pine Hill Schools is currently appealing the denial of funding from USAC for one-time connection support when the school renovation took longer than originally scheduled because of the poor condition of the building and the lack of local engineering and construction support. Commission rules must be adjusted so that such remote locations are not punished because they cannot meet the same deadlines as urban schools that have access to multiple local architects, engineers, and construction contractors. Further, additional resources should be apportioned to ONAP so that office can better assist Tribes in participating in the E-rate Program and complying with its Byzantine regulations.

Table of Contents

	Page
I. BACKGROUND	1
A. About the Navajo Nation	2
B. About the NNTRC	4
II. THE E-RATE REGULATIONS NEED TO BE MODIFIED TO TAKE INTO ACCOUNT THE UNIQUE NEEDS OF INDIAN COUNTRY IN GENERAL AND THE NAVAJO NATION IN PARTICULAR	5
A. The E-rate Regulations Should Be Modified to Allow Tribal Governments to Define What Constitutes a “Library” for purposes of E-rate Support	6
1. Requiring the Navajo Nation to Receive State Acknowledgement that Its Libraries Qualify for E-rate Support Violates the Sovereign Rights of the Navajo Nation	6
2. The Statutory Definition of “Library” is Vague and Internally Inconsistent	9
3. The Definition of a Tribal “Library” Requires Government-to-Government Consultation	14
4. “Anchor Institutions” are the Key to Broadband Deployment in Indian Country	15
5. The Navajo Chapter Houses Function As Libraries	17
B. Tribes Need Additional Flexibility Because of the Difficulties in Constructing on Tribal Lands	21
C. ONAP Needs Additional Resources to be Able to Assist Tribes in Navigating the Complex E-rate Regulations	23
III. CONCLUSION	28

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Modernizing the E-rate)	WC Docket No. 13-184
Program for Schools and Libraries)	

To: The Commission

**COMMENTS OF THE NAVAJO NATION TELECOMMUNICATIONS
REGULATORY COMMISSION (NNTRC)**

The Navajo Nation Telecommunications Regulatory Commission (“NNTRC”), through undersigned counsel, and pursuant to Sections 1.415 and 1.419 of the Commission’s rules (47 C.F.R. §§ 1.415 & 1.419) respectfully submits these Comments in the above-referenced proceeding in response to Notice of Proposed Rulemaking, issued July 23, 2013.¹ In support of these Comments, NNTRC submits:

I. BACKGROUND

Past communications policies of the United States bear witness to the legacy of repression and neglect inflicted on Native Americans. In the bifurcated jurisdiction between interstate and intrastate communications under the Communications Act of 1934, there has been little recognition of the sovereignty of Tribes. Interstate communications has been regulated by the Federal government; intrastate communications has been regulated by the states; but Tribal jurisdiction has been ignored, even when intrastate communications occur wholly on Tribal

¹ Notice of Proposed Rulemaking, FCC 13-100, released July 23, 2013 (hereinafter “*E-rate NPRM*”). The Commission set September 16, 2013 as the date for filing comments and October 16, 2013 for filing reply comments. These Comments are therefore timely filed.

Lands. The “information age” has scarcely reached Tribal Lands, only 70 percent of which are served by Plain Old Telephone Service (“POTS”), as compared with near ubiquitous POTS service elsewhere in America (98%).

A. About the Navajo Nation

As the largest native nation in the United States (in terms of reservation size and population living on the reservation), the Navajos have been particularly disadvantaged by Federal and state communications policies. The Navajo Nation consists of 17 million acres (26,111 square miles) in portions of three states (Arizona, New Mexico, and Utah). The Navajo Nation is comparable in size to West Virginia. Were it a state, the Navajo Nation would rank 4th smallest in population density; only Montana (6.5 persons per square mile), Wyoming (5.4) and Alaska (1.2) are less densely populated.²

The 2009-2010 Comprehensive Economic Development Strategy of the Navajo Nation (“CEDS”) summarizes Navajo Nation economic data including budget figures, primary sources of revenue, major employers, poverty, employment and unemployment figures.³ According to the CEDS, in 2007 the unemployment rate for the Navajo Nation was five times higher than the unemployment rate of the highest ranked U.S. State (Rhode Island at 10%), increasing from 42.16% in 2001 to 50.52% in 2007.⁴ In 2007, the percentage of Navajo people on the Navajo Nation living below the federal poverty level was 36.76%.⁵

² Compare http://en.wikipedia.org/wiki/List_of_U.S._states_by_area (states ranked by geographic area) with http://en.wikipedia.org/wiki/List_of_U.S._states_by_population_density (states ranked by population density).

³ 2009-2010 Comprehensive Economic Development Strategy of the Navajo Nation (“CEDS”), available at http://www.navajobusiness.com/pdf/CEDS/CED_NN_Final_09_10.pdf.

⁴ CEDS at 20.

⁵ *Id.* at 23.

Because of the historic failure of the Federal government to make a place at the table for Tribes, the Navajos find themselves without effective 911 service, while the state of Arizona in 2009 returned \$8,655,700 of the \$17,460,160 collected (or almost exactly 50 percent) to the state general fund, apparently concluding that all Arizonans had access to 911 service.⁶

Broadband access on Tribal lands is dismal,⁷ as the FCC now recognizes:

Available data, which are sparse, suggest that less than 10% of residents on Tribal lands have broadband available. The Government Accountability Office noted in 2006 that “the rate of Internet subscribership [on Tribal lands] is unknown because no federal survey has been designed to capture this information for Tribal lands.” But, as the FCC has previously observed, “[b]y virtually any measure, communities on Tribal lands have historically had less access to telecommunications services than any other segment of the population.” Many Tribal communities face significant obstacles to the deployment of broadband infrastructure, including high buildout costs, limited financial resources that deter investment by commercial providers and a shortage of technically trained members who can undertake deployment and adoption planning. Current funding programs administered by NTIA and RUS do not specifically target funding for projects on Tribal lands and are insufficient to address all of these challenges. Tribes need substantially greater financial support than is presently available to them, and accelerating Tribal broadband deployment will require increased funding.⁸

Unless someone has spent a substantial amount of time on the Navajo Nation, it is impossible to comprehend three critical factors: 1) its sheer size; 2) the lack of population density; and 3) the absence of functional fundamental infrastructure. It is not a far stretch to say that when one enters the Navajo Nation, one enters a third world country. To understand the challenges the Navajo Nation faces, one needs to compare the Navajo Nation to the District of Columbia and two U.S. States that most resemble it in size, West Virginia and South Carolina. As the table below demonstrates, the Navajo Nation’s population density is 10-20 times lower

⁶ See *Second Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges*, issued August 13, 2010 (released August 16, 2010), p. 10.

⁷ *Connecting America: The National Broadband Plan*, pp. 23, 146, released March 10, 2010, available for download at <http://www.broadband.gov/plan/>.

⁸ *Id.* at p. 146 (Box 8-3)(footnotes omitted).

than its nearest state in size, and 1000 times lower than the District of Columbia, where there is a library branch every 2.4 square miles. The 110 Chapter House libraries roughly coincide with the number of library and library branches in comparably sized states such as South Carolina and West Virginia.

Table 1: Comparison of Nation Size and Population to Other States and D.C.

	Navajo Nation	South Carolina	West Virginia	District of Columbia
Size (miles squared)	26,111	31,117	24,231	68.3
Population (in area)	~180,000	4,321,249	1,818,470	581,530
Pop per square mile	6.9	139	75	8514
Counties/Chapters	110	46	55	1
Pop per county	1,591	93,940	33,063	581,530
Public Libraries	110 ⁹	180 ¹⁰	175 ¹¹	28 ¹²
Square miles per Library	237	173	138	2.4

B. About the NNTRC

The NNTRC was established pursuant to Navajo Nation Council Resolution ACMA-36-84 in order to regulate all matters related to telecommunications on the Navajo Nation.

Telecommunications is defined broadly under the Navajo Nation Code to include broadband and “any transmission, emission or reception (with retransmission or dissemination) of signs, signals, writings, images, and sounds of intelligence of any nature by wire, radio, light, electricity or other electromagnetic spectrum.”¹³ The NNTRC is committed to the protection of the public welfare, regulation and the security of the Navajo Nation and its people with regard to

⁹ This number assumes that the FCC would consider all Navajo Chapter Houses as Libraries, as discussed herein.

¹⁰ Source: <http://www.publiclibraries.com/southcarolina.htm>.

¹¹ Source: <http://www.publiclibraries.com/westvirginia.htm>.

¹² Source: <http://www.publiclibraries.com/dc.htm>.

¹³ 21 N.N.C. § 503 (V).

telecommunications. Its purpose is to service, develop regulation and to exercise the Navajo Nation's inherent governmental authority over its internal affairs as authorized by the Navajo Nation Council pursuant to NNTRC's Plan of Operation and the Navajo Telecommunications Regulatory Act.¹⁴

NNTRC is specifically authorized, pursuant to the Navajo Telecommunications Regulatory Act, to act as the intermediary agency between the Navajo Nation and the Federal Communications Commission, including representing the Navajo Nation in proceedings before the Commission, intervening on behalf of the Navajo Nation on matters pending before the Commission, and filing comments in rule making proceedings.

II. THE E-RATE REGULATIONS NEED TO BE MODIFIED TO TAKE INTO ACCOUNT THE UNIQUE NEEDS OF INDIAN COUNTRY IN GENERAL AND THE NAVAJO NATION IN PARTICULAR

The *E-rate NPRM* represents the first time in nearly 15 years that the Commission is reviewing comprehensively the regulations that govern its Schools and Libraries ("E-rate") program. The *E-rate NPRM* makes a strong case for the importance of the E-rate Program, and the role libraries play within the program.

In libraries, high-capacity broadband access provides patrons the ability to search for and apply for jobs; learn new skills; interact with federal, state, local, and Tribal government agencies; search for health-care and other crucial information; make well-informed purchasing decisions; engage in life-long learning; and stay in touch with friends and family.¹⁵

NNTRC could not agree more. The *E-rate NPRM* seeks input specifically from Tribal governments,¹⁶ and asks a number of questions related to the special needs of Indian Country, which will be addressed later in the comments.

¹⁴ Codified at 2 N.N.C. §§ 3451 -55; 21 N.N.C. §§ 501-529.

¹⁵ *E-rate NPRM*, ¶ 4.

¹⁶ *E-rate NPRM*, ¶ 12.

The *E-rate NPRM* does **not**, however, deal with the two interrelated “pink elephants” in the room: 1) the lack of fundamental infrastructure on reservations; and 2) the fundamental fairness (and illegality) of requiring tribes to seek state approval for designating what is a “library.” Unless and until the FCC deals with these two issues, the E-rate program will be of little use to Tribes who lack buildings that “look” like traditional ivy-covered libraries. The only solution to this is to allow Tribes to exercise their inherent sovereignty and designate Tribal anchor institutions as libraries for purpose of receiving E-rate support. For the Navajo, the only logical infrastructure which exists that can serve the purposes outlined in the *E-rate NPRM* are its 110 Chapter Houses. Unfortunately, to date, USAC has taken upon itself to conclude that the Navajo Chapter Houses are not libraries, thus forcing the Navajo Nation out of the program, and leaving many adult Navajos without any access to broadband.¹⁷

A. The E-rate Regulations Should Be Modified to Allow Tribal Governments to Define What Constitutes a “Library” for purposes of E-rate Support

1. Requiring the Navajo Nation to Receive State Acknowledgement that Its Libraries Qualify for E-rate Support Violates the Sovereign Rights of the Navajo Nation

The relationship between Federal, state, and Tribal governments is complex. Under the Constitution, Congress was granted the power to “regulate Commerce . . . with the Indian

¹⁷ The Navajo Nation has received Commitment Adjustment Letters (CALs) from USAC seeking to recoup approximately \$5 million in support, and denying support of an additional approximately \$5 million for the last three years in which the Navajo Nation participated in the E-rate program to support its Chapter House libraries, based in part on a finding that the Navajo Chapter Houses are not libraries. *See* Form 471 App. No. 477250, Funding Request # 1337841 (funding year 2005), appeal filed August 29, 2011; Form 471 App. Nos. 536476, 536820, 536993, 537091, 537378, Funding Request numbers 1484785, 1485605, 1486127, 486934, 1487823 (funding year 2006), appeal filed September 20, 2011; Form 471 App. Nos. 585247, 586355, Funding Request #s 1623407, 1627256 (funding year 2007), appeal filed September 30, 2011. Because of the USAC inquiries that led to the CALs in 2011, the Navajo Nation has effectively been locked out of the E-rate program to support library services. Because the above-referenced Funding Requests are the subject of an on-going appeal, NNTRC is filing these Comments in Dockets 02-6 and 95-45 as well as the instant docket.

Tribes,”¹⁸ while the President was empowered to make treaties, necessarily including Indian treaties, with the consent of the Senate.¹⁹ In most areas, the Federal government preempts the states with respect to Tribes, yet Tribes occupy lands located within states. That dichotomy creates a longstanding tension between state and federal law. Almost from the beginning of the country, the Supreme Court had to deal with the jurisdictional relationship between states and Tribes. In *Cherokee Nation v. Georgia*,²⁰ Chief Justice Marshall concluded that Tribes (at least those residing on reservations) were akin to states. The next term, in *Worcester v. Georgia*,²¹ Justice Marshall elaborated on the status of Tribes with respect to states and state laws. There, several missionaries convicted of entering the Cherokee Nation without first obtaining a license from the state governor appealed their convictions. The Supreme Court overturned the convictions, concluding that the course of relations between the Federal government and the Cherokees provided ample evidence that the Federal government “manifestly consider[s] the several Indian nations as distinct political communities, having territorial boundaries, within which their authority is exclusive.”²² He went on: “The Cherokee nation, then, is a distinct community, occupying its own territory, with the boundaries accurately described, in which the laws of Georgia have no force.”²³

Although Indian law jurisprudence is anything but static, one principle has remained remarkably consistent: over matters that occur wholly within reservations, and affect only Tribal members, and relate to issues over which Tribes have asserted jurisdiction, the states have little

¹⁸ U.S. Const. Art. I, § 8, cl. 3.

¹⁹ U.S. Const. Art. II, § 2, cl. 2.

²⁰ 30 U.S. (5 Pet.) 1 (1831).

²¹ 31 U.S. (6 Pet.) 515 (1832).

²² *Id.* at 557.

²³ *Id.* at 561.

or no role.²⁴ Indeed, any Federal law delegating to states jurisdiction of internal tribal determinations concerning tribal institutions clearly detracts from tribal self-government. Thus, the general rule for interpreting federal statutes affecting tribal jurisdiction is that tribal sovereignty and self-government are preserved unless a contrary intent of Congress is clear and explicit.²⁵

The Navajo Nation has asserted jurisdiction over the education of Navajos, and over cultural preservation, especially the preservation of the Navajo language. Further, the Nation has statutorily determined that the Chapter Houses will be the focus of educational efforts.

“Educational . . . activities of the local community shall be centered in the chapter houses . . .

[and] . . . chapter houses . . . shall be used for a variety of purposes such as adult education . . .

*.”*²⁶ The purpose of the Office of the Navajo Nation Library, established within the Division of Diné Education, is “to provide educational, informational, cultural and recreational materials and services to *all* residents of the Navajo Nation.”²⁷ Because a single location on the Navajo Nation cannot serve a population spread across almost 27,000 square miles, the Office of the Navajo Nation Library therefore has the responsibility to “work with . . . chapters . . . to support .

²⁴ See *Williams v. Lee*, 358 U.S. 217 (1958); *Organized Village of Kake v. Egan*, 369 U.S. 60 (1962) (state law cannot be extended into reservations where to do so would interfere with the functioning of Tribal governments); *McClanahan v. Arizona Tax Comm’n*, 411 U.S. 164 (1973) (state of Arizona could not tax a Navajo’s personal income derived from work on the Navajo nation).

²⁵ See *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 143-44 (1980) (“Ambiguities in federal law have been construed generously in order to comport with [] traditional notions of [tribal] sovereignty and with the federal policy of encouraging tribal independence”; see also *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 59-60 (1978) (federal statutes will not be interpreted to “interfere[] with tribal autonomy and self-government . . . in the absence of clear indications of legislative intent”); see *Montana v. Blackfeet Tribe*, 471 U.S. 759, 767-68, 105 S.Ct. 2399, (1985) (“[t]he canons of construction [of statutes] applicable in Indian law are rooted in the unique trust relationship between the United States and the Indians . . . [and] statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit”).

²⁶ 6 N.N.C. § 1 (emphasis added).

²⁷ Navajo Nation Library Plan of Operation, Section II, Resolution No. GSCAP-35-01 of the Government Services Committee of the Navajo Nation Council (2001) (emphasis added).

. . . access to . . . Library services and resources” and “[t]o actively seek, secure and transport donations of books and non-book materials to local communities and Navajo Nation chapters.”²⁸

Exclusive jurisdiction over internal governmental affairs is a fundamental aspect of self-government, and the general rule preserving tribal authority over any determination of the nature of its tribal institutions should be applied in this case. Requiring the Navajo Nation to seek approval of the designation of Chapter Houses as libraries from three separate states (Arizona, New Mexico and Utah) undercuts the Nation’s authority, violates its rights as a sovereign nation and its treaty rights, and is constitutionally offensive. In the same manner as states designate libraries for themselves, the Navajo Nation has designated Chapter Houses as libraries and mandated that the Office of the Navajo Nation Library work with Chapter Houses to provide library and educational services.

2. The Statutory Definition of “Library” is Vague and Internally Inconsistent

The 1996 Telecommunications Act that extended the E-rate program to libraries does not contain a definition of a “library.” Instead, the Act references the definition of “library” contained in the Library Services and Construction Act (LSCA). The LSCA was enacted in 1962 and amended in 1984 by Public Law 98-480 (Library Services and Construction Act Amendments of 1984) to specifically address the needs of Tribes. Section 2(a) of the amended LSCA reads as follows:

Sec. 2. (a) It is the purpose of this Act to assist the States in the extension and improvement of public library services to areas and populations of the States which are without such services or to which services are inadequate *and to assist Indian tribes in planning and developing library services to meet their needs.*²⁹

²⁸ *Id.* at Section IV.

²⁹ Pub. L. 84-480 (1984) (emphasis added), appended hereto as Attachment 5.

The 1984 LSCA Amendments established a new Title IV, “Library Services for Indian Tribes,” which found that: “Indian tribes and reservations are generally considered to be separate nations and seldom are eligible for direct library allocations from States.”³⁰ To this end, Congress concluded:

It is therefor [sic] the purpose of this title (1) to promote the extension of public library services to Indian people living on or near reservations; (2) to provide incentives for the establishment and expansion of tribal library programs; and (3) to improve the administration and implementation of library services for Indians by providing funds to establish and support ongoing library programs.³¹

LSCA placed Tribes on equal or near-equal footing with states,³² and set aside appropriations for Tribes.³³ It also recognized and approved the use of libraries “*to serve as community centers for information and referral.*”³⁴

Congressional intent was clear. When Congress enacted the 1996 Telecommunications Act (“1996 Act”) to extend Universal Service Fund support, it looked to the LSCA and its history to define what constituted a “library,” and to recognize that Tribes are sovereign nations whose needs were not adequately addressed by the conventional approach to library funding. The 1996 Act was signed into law by President Clinton on February 8, 1996. The versions of the 1996 Act posted on the FCC’s website still reference the LSCA definition of a “library.”³⁵

A problem of statutory interpretation arises with the repeal of LSCA by Congress a few months after the 1996 Telecommunications Act was passed. The problem is compounded by the

³⁰ *Id.*, Sec. 114.

³¹ *Id.*

³² *Id.* Sec. 105(a) (inserting “and Indian Tribes” after “States” in the heading of Section 5 of the Act).

³³ *Id.* Sec. 105(c)(1).

³⁴ *Id.* Sec. 110 (emphasis added).

³⁵ See <http://transition.fcc.gov/telecom.html>

Omnibus Consolidated Appropriations Act of 1997,³⁶ a 750 page bill that contained hundreds of technical corrections to various statutes. The 1997 Appropriations Act shifts the definition of “library,” to which Section 254(h) of the Communications Act refers from LSCA to the Library Services and Technology Act (LSTA), enacted later in 1996.³⁷ The LSTA definition of “library”³⁸ does not include specific findings with respect to Tribes, Tribal rights, or the interplay between states and Tribes. Section 9161, “Services for Native Americans,” states simply:

From amounts reserved under section 9131 (a)(1)(A) of this title for any fiscal year the Director shall award grants to Indian tribes and to organizations that primarily serve and represent Native Hawaiians (as the term is defined in section 7517 of this title) to enable such tribes and organizations to carry out the activities described in section 9141 of this title.”³⁹

The FCC recognized the interpretive issue in its 1997 Order implementing the schools and library program:

Section 254(h)(5) does not include an explicit definition of libraries eligible for support. Rather, in section 254(h)(4)'s eligibility criteria, Congress cited LSCA. The Joint Board, therefore, used the definition of library found in Title III of the LSCA. In late 1996, however, Congress amended section 254(h)(4) to replace citation to the LSCA with a citation to the newly enacted LSTA. In light of this amendment to section 254(h)(4), we find it necessary to look anew at the definitions of library and library consortium and adopt definitions that are consistent with the directives of section 254(h).⁴⁰

³⁶ Pub. L. 104-208. Available at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=104_cong_public_laws&docid=f:publ208.pdf. Undersigned counsel can find no legislative history connected with this change. See <http://www.access.gpo.gov/congress/legislation/97appro.html> (Government Printing Office site containing documents related to Public Law 104-208, including all House, Senate, and Conference Reports). Other than citing the language of Section 709, no other mention is made of the change to the 1996 Telecommunications Act.

³⁷ 20 U.S.C. §§ 9121-9163.

³⁸ 20 U.S.C. § 9122.

³⁹ 20 U.S.C. § 9161.

⁴⁰ *Federal-State Joint Board on Universal Service, Report and Order*, CC Docket No. 96-45, FCC 97-157, 12 FCC Rcd 8776, 9069-70 (*Order*). The Commission released an erratum correcting this Order on June 4, 1997. See *Federal-State Joint Board on Universal Service, Order on Reconsideration*, CC Docket No. 96-45, FCC 97-246, 62 Fed. Reg. 40,742 (July 30, 1997).

After discussing the differences in the statutory definitions, the FCC concluded, “[w]e, therefore, adopt the LSTA definition of library for purposes of section 254(h), but we conclude that a library’s eligibility for universal service funding will depend on its funding as an independent entity.”⁴¹ This conclusion was based on the assumption that “LSTA defines a library more broadly than did the former LSCA and includes, for example, academic libraries and libraries of primary and secondary schools.”⁴² While this assumption may be correct in some contexts, it is incorrect with respect to Tribal libraries. The original version of Section 254(h), based on LSCA, defines a “library” as “eligible to participate in State-based plans for funds,” whereas the version of Section 254(h) based on LSTA defines a library as “eligible for assistance by a State library administrative agency.”⁴³

The distinction is significant. For Indian Country in general, and the Navajo Nation in particular, this “conforming” amendment, lacking any legislative history, can have a disastrous impact if implemented without regard to federal policy with respect to tribes and the history of Section 254(h). Because LSCA provided grants to states to assist tribes, tribal libraries met the LSCA definition and qualified for E-rate support. By contrast, because LSTA provides grants directly to Tribes, it is less clear whether Tribal libraries are “eligible to participate in State-based plans for funds.” In addition, under LSTA, the eligibility of a “private library” is determined by a state, since a private library qualifies for e-rate funding, “only if the State in which such private library is located determines that the library should be considered a library for purposes of this subtitle.”⁴⁴

⁴¹ *Id.* at ¶ 558 (footnotes omitted).

⁴² *Id.* at ¶ 557.

⁴³ *Id.* at ¶ 552.

⁴⁴ Pub. L. No. 104-208, § 213(2), quoted *Id.* at n. 1436.

The Government Accounting Office (GAO) reached a similar conclusion concerning the need to interpret Section 254(h) with due consideration for issues of tribal sovereignty. In its 2006 report, “Telecommunications: Challenges to Assessing and Improving Telecommunications For Native Americans on Tribal Lands,”⁴⁵ the GAO noted that the eligibility criteria set forth in the LSTA raise complex jurisdictional issues.

The Communications Act defines E-rate eligible libraries as those eligible for assistance from a state library administrative agency under the Library Services and Technology Act (LSTA), which provides federal grant funds to support and develop library services in the United States. LSTA has two types of library grants that primarily relate to governmental entities: one for states and one for federally recognized tribes and organizations that primarily serve and represent Native Hawaiians. To be eligible for E-rate funds, a tribal library must be eligible for state LSTA funds and not just tribal LSTA funds.

The eligibility criterion also has practical implications for the E-rate program. Libraries applying for LSTA funds must self-certify their eligibility. As part of its integrity process, USAC requires a third party verification of the eligibility requirement. Thus, USAC verifies a library’s eligibility for E-rate funds by asking state library administrative agencies to provide written certification of a library’s eligibility for state LSTA funds. This process has prompted a number of comments from several of those we interviewed. Some tribal and state library agency officials noted that the current eligibility criterion infringes on tribal sovereignty by involving the state in tribal library E-rate funding. One state librarian, for example, expressed discomfort at being put in the position of acting on behalf of a sovereign tribe and expressed the strong belief that eligibility for E-rate funding should be a matter between the tribe and USAC, without involvement by state government agencies. USAC officials told us that they have received some E-rate applications from tribal libraries. In those cases, a USAC board member successfully worked with the states in question to obtain the certifications. However, USAC officials and the USAC board member emphasized the time-consuming nature of these resolution efforts.⁴⁶

USAC’s current approach to Tribal libraries denies substantive rights to a class whose rights had previously been recognized by Congress. Absent any evidence of Congressional intent, this approach abrogates rights previously granted to tribes and radically departs from

⁴⁵ GAO-06-189, released January, 2006.

⁴⁶ *Id.* at pp. 30-31.

federal policy of promoting Indian self-determination and sovereignty.⁴⁷ Under the doctrine of “sympathetic construction,” statutes are to be construed sympathetically to Tribal interests, especially where the statute is ambiguous or subject to multiple interpretations.⁴⁸ The doctrine also overcomes normal agency deference when it comes to statutory construction.⁴⁹

3. The Definition of a Tribal “Library” Requires Government-to-Government Consultation

The FCC now has the opportunity to step in and solve the problem it created in 1997, and which GAO identified in 2006. It must amend its rules such that Tribes have a say in defining what constitutes a library on its reservation, rather than states. The Federal trust relationship requires consultation to achieve a “tailored approach.”

Tribes are inherently sovereign governments that enjoy a special relationship with the U.S. predicated on the principle of government-to-government interaction. This government-to-government relationship warrants a tailored approach that takes into consideration the unique characteristics of Tribal lands in extending the benefits of broadband to everyone. Any approach to increasing broadband availability and adoption should recognize Tribal sovereignty, autonomy and independence, the importance of consultation with Tribal leaders,

⁴⁷ See, e.g., *Director of Revenue of Missouri v. CoBank ACB*, 531 U.S. 316, 323-24, 121 S.Ct. 941, 945 (2001) (declining to find that the States’ ability to tax the income of banks for cooperatives was eliminated by Congress where deletion of two sentences in one of numerous conforming and technical amendments adopted in 1985 to the Farm Credit Act of 1971 eliminated the express statutory authorization for such taxation, and where such an interpretation would mean “that Congress made a radical-but entirely implicit-change in the taxation of banks for cooperatives with the 1985 amendment”); see *Ramirez-Osorio v. I.N.S.*, 745 F.2d 937, 943-44 (5th Cir. 1984) (declining to find that a conforming amendment to the Refugee Act of 1980 altered or created substantive rights where there was no clear Congressional intent in the language of the Act or the legislative history); see *Morton v. Mancari*, 417 U.S. 535, 555 94 S.Ct. 2474, 2485 (1974) (holding that the Equal Employment Opportunity Act of 1972 did not implicitly repeal the provisions in the Indian Reorganization Act of 1934 for Indian preference in federal government employment on and near reservations, where Congress did not express an intent to contradict policy to promote Indian self-government).

⁴⁸ *Montana v. Blackfeet Tribe*, 471 U.S. 759, 767-68, 105 S.Ct. 2399, (1985) (“[t]he canons of construction [of statutes] applicable in Indian law are rooted in the unique trust relationship between the United States and the Indians . . . [and] statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit”).

⁴⁹ *Ramah Navajo Chapter v. Lujan*, 112 F.3d 1455 (10th Cir. 1997); *Albuquerque Indian Rights v. Lujan*, 930 F.2d 49, 59 (D.C. Cir. 1991).

the critical role of Tribal anchor institutions, and the community oriented nature of demand aggregation on Tribal lands.⁵⁰

In adopting policies that have a particular impact on Tribes, there is a Federal mandate to consult with Indian tribes on a government-to-government basis under Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*.⁵¹ In addition, the FCC's own Tribal Policy Statement provides that, "[t]he Commission, in accordance with the federal government's trust responsibility, and to the extent practicable, will consult with Tribal governments prior to implementing any regulatory action or policy that will significantly or uniquely affect Tribal governments, their land and resources."⁵² The FCC should therefore consult with Tribes in order to determine what constitutes a library in Indian Country. The definition will change depending on the Tribe. For the Navajo, it is the Chapter House that functions, as a matter of Navajo law, as the place where adult education is to be conducted. For other Tribes, their situations may dictate other buildings as libraries. The FCC should look to "Anchor Institutions" to find the necessary infrastructure for library support on Tribal lands under the E-rate Program.

4. "Anchor Institutions" are the Key to Broadband Deployment in Indian Country

The National Broadband Plan (NBP) recognizes the vital role that "anchor institutions" play on Tribal lands in multiple places:

⁵⁰ National Broadband Plan, p. 146 (Box 8-3).

⁵¹ Executive Order No. 13175, 65 Fed. Reg. 67249 (November 9, 2000). *See also* <http://www.whitehouse.gov/the-press-office/memorandum-tribal-consultation-signed-president>.

History has shown that failure to include the voices of tribal officials in formulating policy affecting their communities has all too often led to undesirable and, at times, devastating and tragic results. By contrast, meaningful dialogue between federal officials and tribal officials has greatly improved federal policy toward Indian tribes. Consultation is a critical component to creating a sound and productive federal-tribal relationship."

⁵² *Tribal Policy Statement*, 16 FCC Rcd at 4081.

The federal government and state governments should develop an institutional framework that will help America's anchor institutions obtain broadband connectivity, training, applications and services.⁵³

Any approach to increasing broadband availability and adoption should recognize Tribal sovereignty, autonomy and independence, the importance of consultation with Tribal leaders, the critical role of Tribal anchor institutions, and the community oriented nature of demand aggregation on Tribal lands.⁵⁴

In recognition of the unique challenges facing Tribal communities, Congress should consider amending the Communications Act to provide discretion to the FCC to define circumstances in which schools, libraries and health care providers that receive funding from the E-rate or Rural Health Care program may share broadband network capacity that is funded by the E-rate or the Rural Health Care program with other community institutions designated by Tribal governments.⁵⁵

This "tribal-centric" approach, which recognizes the importance of Tribal anchor institutions, has been adopted in various proceedings currently before the Commission. For example, as stated in a pending Notice of Inquiry: "Thus, any approach to deploying communications services, removing barriers to entry, and increasing broadband availability and adoption must recognize Tribal sovereignty, autonomy, and independence, the unique status and needs of Native Nations and Native communities, the importance of consultation with Native Nation government and community leaders, and the critical role of *Native anchor institutions*."⁵⁶ The FCC also

⁵³ NBP, p. 136.

⁵⁴ *Id.*, p. 146.

⁵⁵ *Id.*, p. 154. As demonstrated *infra*, p. 36, each Navajo Chapter house had two sets of connectivity, one for the "administration" side and one for the library side.

⁵⁶ *Improving Communications Services For Native Nations, Notice of Inquiry*, CG Docket 11-41, FCC 11-30, ¶ 5 (released March 4, 2011) (emphasis added). See also *In the Matter of Universal Service Reform, Mobility Fund, Notice of Proposed Rule Making*, WT Docket 10-208, FCC 10-182 (released October 14, 2010); *Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands*, WT Docket 11-40, FCC 11-29 (released March 3, 2011) ("Access to 9-1-1, and other public safety services, is critical to every American no matter their location. Likewise, broadband service to anchor institutions and residential areas is beneficial to our entire Nation." Comments of Commissioner Clyburn).

specifically has recognized the critical role Navajo Chapter Houses play in bringing telecommunications services to the Navajo.⁵⁷

NTIA recognized Tribal Chapter Houses as “anchor institutions” in Round 2 BTOP funding under ARRA.⁵⁸ Utah recognizes Chapter Houses as “anchor institutions.”⁵⁹ The 110 Chapter Houses serve a myriad of functions, from the seat of local government to the home for Indian Health Service representatives. As discussed below, the functions of the Chapter Houses include that of a library.

5. The Navajo Chapter Houses Function As Libraries

The Navajo Chapter Houses function as libraries. E-rate funded computers, many now silent for over five years since USAC began to withhold E-rate funding, provided critical educational services to some of the poorest and least “connected” individuals in the United States. When the Bill and Melinda Gates Foundation sought libraries where computers could be located and made available to the Navajo people, the Chapter Houses were the only suitable sites. The Gates Report had this to say about the functions of Chapter Houses and their suitability as computer libraries:

Each Chapter House is the site of community gatherings, meetings, events, and the place local residents vote. The Chapter House also serves as the “county seat” for the elected officials and the government employees who deliver services to the

⁵⁷ See, e.g., <http://transition.fcc.gov/cgb/news/070104itsummit.html> (June 24, 2004 FCC Public Notice describing meeting between FCC officials and the Navajo Nation Telecommunications Regulatory Commission (NNTRC) related to using Chapter Houses as hubs for communications services). See also <http://transition.fcc.gov/cgb/rural/presentations/ONSAT2OverviewofNNHeadStartTechnologyPlan.pdf> and <http://transition.fcc.gov/cgb/rural/presentations/ONSAT1HeadStartITPresentation.pdf> (two presentations concerning the Navajo use of Chapter Houses as libraries that still reside on the FCC’s website).

⁵⁸ See <http://www.broadbandusa.gov/files/BTOP%20NOFA%201-15-10%20with%20disclaimer.pdf>.

⁵⁹ See <http://www.stimulatingbroadband.com/2009/11/utah-broadband-stimulus-gov-herbert.html> (Utah governor Gary Herbert in 2009 recommended funding for connectivity to “110 Anchor Institutions (Chapter Houses)”).

Navajo people. Recently, a change in Navajo Nation leadership resulted in the endorsement of a local empowerment movement designed to give more autonomy to the local Chapter Houses as they seek to improve their local economies.

In order to introduce Navajo tribal members to the technology so that they could consider participation in the Program, the Project Coordinator for NAATP met with an official from every Chapter House and made a presentation which included a demonstration of the machines. She reports that ‘Interest became intense when elders saw and heard the machines speaking Navajo.’ She had installed the Navajo Language Sentence Machine program. The demonstration proved so successful that all 110 Chapter Houses decided to participate in the NAATP, a first time – many say – that all Chapter Houses have agreed on anything! Computer savvy members hope using the Navajo Language program will encourage community members to experiment with other software as well.⁶⁰

Designating the 110 Chapter Houses as libraries made perfect sense. The Chapter Houses are “anchor institutes,” cultural centers for Navajos, and the functional equivalent of public libraries. In addition to government meetings, classes are taught, and other community meetings are held at the Chapter Houses. There is no other set of buildings spread throughout the Navajo Nation that can serve this purpose. If the Chapter Houses are not libraries, there are no libraries for the Navajo.

The 2003-2005 Navajo Nation Library Consortium Technology Plan (“Library Consortium Technology Plan”) recognized the key role of Chapter Houses within the Navajo library system in making available educational resources and preserving Navajo culture.⁶¹

To serve the 111 branch/libraries we have at present over 1000 computers with access to various information resources via the internet. We will work to expand the resources currently available to include the federal, state, and Navajo Nation information resources to meet the needs of the patrons across the Navajo Nation. This is particularly important, as there are many historical and traditional Navajo items, information and educational artifacts at our main Window Rock Library that need to be shared with the

⁶⁰ See “Request for Review and Waiver”, filed August 29, 2011 by the Navajo Nation Dine Education Consortium in Docket 96-45 (“Navajo Request for Review”), Attachment 2, Exhibit 1, pp. 9 & 17.

⁶¹ See Navajo Request for Review, Attachment 6, Navajo Nation Library Consortium Technology Plan (2003-2005).

Chapter/Libraries. We also will work to collect historical data and information at the Chapter/Libraries that will be shared.⁶²

The 2003-2005 Library Consortium Technology Plan called for the Chapter Houses to be the site of distant learning. “This new level of service [funded by E-rate] allows the chapter/libraries to provide distance education and video level training at some of the most remote and rural and underserved locations in the entire United States.”⁶³ To track usage and gauge the extent to which Navajo Nation library resources were being disseminated throughout the Navajo Nation, the Library Consortium Technology Plan called for the collection of data from the library card system.⁶⁴

In stark contrast, if the FCC continues to allow USAC to reach legal conclusions as to what constitutes a library, the Navajo Nation has only one library to serve 26,111 square miles.⁶⁵ Residents of Antelope Canyon, AZ would need to travel 240 miles and almost five hours to have access to E-rate supported computers. Residents of Tuba City, the largest Navajo community, would need to travel over 150 miles and three hours.

The Navajo Chapter Houses vary radically in terms of size, condition, and architecture.⁶⁶ They may not “look” like traditional libraries, but they perform the same key functions of cultural preservation and perpetuation. They are an organized system of “special libraries and information centers” created by the Navajo Nation to improve “services to the clientele of such libraries.”⁶⁷

⁶² *Id.*, p. 3.

⁶³ *Id.*, p. 4.

⁶⁴ *Id.*, p. 2, 4.

⁶⁵ See Navajo Request for Review, Attachment 1, CAL Explanation Letter, p. 7.

⁶⁶ See Navajo Request for Review, Attachment 2, Exhibit 27 (images of the 110 Chapter Houses).

⁶⁷ See 47 U.S.C. § 54,500(d),(e).

Until 150 years ago, Navajo was a purely spoken language. The Navajo language first appeared in written form in 1849, and then used only by outsiders. Because a uniform Navajo alphabet was not developed until 1939, book publishing in the native Navajo language has been possible for only slightly more than 70 years. It should therefore come as no surprise that the Chapter House libraries do not contain large collections of books.

The Chapter Houses are the only viable locations to preserve Navajo culture and provide internet access for educational purposes. The Gates Foundation, the Nation, and other Federal and state agencies have invested heavily in the construction, modification, installation, and maintenance of the Chapter Houses as libraries. The FCC has been briefed numerous times on the function of Chapter Houses as the “hub” for community access to the Internet.⁶⁸ Like libraries in other rural communities, the Chapter Houses serve a variety of cultural purposes. The Navajo people are communal by nature, and use their Chapter Houses as gathering places to exchange ideas, participate in Tribal governance, and make use of vital Federal and Tribal services. The versatility of the Chapter Houses does not mean that one of their functions is not that of a library. They most certainly do, functioning as “information centers”⁶⁹ where Navajo citizens, especially children, can have access to computers to bridge the Digital Divide. Under the LSCA, still a relevant indication of Congressional intent, the collocation and use of libraries as community centers was statutorily encouraged, not prohibited.

⁶⁸ See, e.g., <http://transition.fcc.gov/cgb/news/070104itsummit.html> (June 24, 2004 FCC Public Notice describing meeting between FCC officials and the Navajo Nation Telecommunications Regulatory Commission (NNTRC) related to using Chapter Houses as hubs for communications services). See also <http://transition.fcc.gov/cgb/rural/presentations/ONSAT2OverviewofNNHeadStartTechnologyPlan.pdf> and <http://transition.fcc.gov/cgb/rural/presentations/ONSAT1HeadStartITPresentation.pdf> (two presentations concerning the Navajo use of Chapter Houses as libraries that still reside on the FCC’s website).

⁶⁹ See 47 U.S.C. § 54.500(d),(e).

The single most important thing the Commission can do to assist Tribes in gaining access to the E-rate Program for anything beyond schools, therefore, is to consult with them and allow Tribes to determine for themselves what constitutes a library, rather than placing that power into the hands of bureaucrats who have never had to live, work, and attempt to educate themselves and their children on a native reservation.

B. Tribes Need Additional Flexibility Because of the Difficulties in Constructing on Tribal Lands

In the *E-rate NPRM*, the Commission asks if there is anything unique to bringing broadband to Indian Country that warrants closer analysis or modification of the E-rate rules to better meet the needs of Tribes. In particular, the *E-rate NPRM* states:

In seeking comment on our proposed goals and measures, and on options to modernize E-rate to better align it with these goals, in addition to specific questions posed throughout, we encourage input from Tribal governments and ask generally whether there are any unique circumstances on Tribal lands that would necessitate a different approach. Similarly, we request comment on whether there are any unique circumstances in insular areas that would necessitate a different approach.⁷⁰

NNTRC submits that there are a number of unique circumstances that require a “tailored approach” as called for in the National Broadband Plan. NNTRC sees at least five unique qualities about Indian Country that make participation in the E-rate program so problematic:

- 1) Lack of adequate physical infrastructure on reservations;
- 2) Difficulty in building anything in Indian Country because of complications with land status, rights of way, and building regulations;
- 3) Lack of engineering and technical resources available to tribes;
- 4) Lack of training in E-rate compliance;
- 5) Lack of internal financial resources to solve the lack of technical, engineering, and regulatory compliance workforce in Indian Country.

⁷⁰ *E-rate NPRM*, ¶ 12.

The case of Pine Hill Schools on the Navajo Nation provides a prime example of what can happen when all of the factors above come into confluence.⁷¹ Pine Hill Schools is located in the Ramah Chapter which is isolated from the rest of the Navajo Nation. The Ramah Navajo Chapter is a political sub-division of the Navajo Nation in the western part of New Mexico, just east and southeast of the Zuni Indian Reservation. The Ramah Chapter, due to its location, is the only Navajo Chapter with its own Bureau of Indian Affairs (BIA) agency. Pine Hill Schools applied for E-rate support in Funding Year 12 (2009-2010),

[I]ntending to use the funds to re-cable our Elementary School building # 803 following a planned renovation of the building. During the course of this renovation it became apparent that building was in drastically worse shape than we had known. After extensive tests and consultation with the engineers it was determined that the building should either be condemned or have a far more extensive renovation than we had anticipated. It took quite some time to make a decision due to following the proper steps and board meetings but the school decided to essentially gut the building and do a complete renovation. This meant that we had to re-bid the project, hire new contractors and schedule the work. The additional work significantly pushed back our expected project completion date from 2011 to 2013. The construction phase of the renovation was not completed until late December of 2012 and we are now close to getting the building ready to hold classes again. The cabling is one of the last pieces that needs to get done.⁷²

On May 17, 2013, USAC had this to say about Pine Hills' predicament:

FCC Rules related to the payment of support for discounted services establish deadlines for service providers to deliver services/products to the applicant. The FCC provides an extension of this deadline under certain conditions. Those conditions are documented in the Reference area on the USAC website. (See Service Delivery Deadlines and Extension Requests for more information). In accordance with FCC Report and Order (FCC 01-195) released on June 29, 2001 , in order to provide additional time to implement contracts or agreements with service providers for non-recurring services, applicants must submit documentation to the Administrator requesting relief on or before the original non-recurring services deadline. Your appeal has not brought forth clear in

⁷¹ Because the Pine Hill Schools situation is currently the subject of a Request for Review, NNTRC is filing these Comments in Docket 02-6 and 95-45 as well as the instant docket.

⁷² Request for Review filed by Pine Hill Schools, appended hereto as Attachment A.

foundation [sic] establishing that application for relief was made prior to this deadline. Therefore, your appeal is denied.⁷³

Yet Pine Hills had submitted a Contract Extension Request and Invoice Deadline Extension request prior to the invoice expiration of January 30, 2013, and NNTRC supports Pine Hills' appeal.

The larger issue this case brings into focus, however, is how difficult it can be for Tribes to take part in the E-rate program, highlighting the unique characteristics outlined above.

- 1) Pine Hills Schools applied for nonrecurring E-rate support for a renovation project, but realized that the building was in such bad shape that the initial renovation plan wouldn't work (evidencing the lack of adequate physical infrastructure on reservations);
- 2) The restructuring of renovation plan took time (evidencing the difficulty in building anything in Indian Country);
- 3) Pine Hill Schools had to bring in contractors from Albuquerque (130 driving miles from Ramah) to do the work (evidencing lack of engineering and technical resources available to tribes); and
- 4) Pine Hill Schools had no one internally familiar with E-rate compliance and USAC procedures (evidencing lack of training in E-rate compliance).

Stories like this abound in Indian Country, and demonstrate how the E-rate Program has failed many Tribes. There is no quick fix to these problems, which are multifaceted and systemic. The Commission needs to acknowledge, however, that only by carefully tailoring solutions for Indian Country will things change.

C. ONAP Needs Additional Resources to be Able to Assist Tribes in Navigating the Complex E-rate Regulations

The one thing the Commission can do internally to assist Indian Country in relation to the E-rate Program would be to increase the size and budget of the Office of Native Affairs and Policy (ONAP). Established on August 10, 2010, ONAP has been a positive force both within

⁷³ *Id.*

the FCC and in the government-to-government relationship between the FCC and Tribes.⁷⁴ Yet the needs in Indian Country are many, and ONAP's personnel and resources are too few. Further, the NNTRC urges the FCC to provide additional technical and engineering support to ONAP, so that ONAP in turn can better assist Tribes to meet the challenges of bringing broadband to all of Indian Country. The engineering expertise simply does not exist in Indian Country to make a go of this alone. The rural nature of much of Indian Country, and lack of population density, require innovative solutions that only the brightest engineers can provide. Money alone will not overcome the Digital Divide, Tribes must have access to talented engineers as well.

III. CONCLUSION

The E-rate Program is vital in bringing broadband to underserved populations, especially those who either have no access to broadband at home, or cannot afford to pay for it. As detailed in these comments, however, there are systemic structural problems with the E-rate regulations that make Tribal participation difficult, if not impossible. The Navajo have all but been shut out of the program for the past five years because of a USAC decision that the Navajo Chapter Houses don't look like libraries, and therefore don't qualify for support.

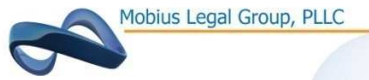
The NNTRC therefore requests that the FCC modify these regulations to recognize the sovereign rights of Tribes and honor the government-to-government relationship between Tribes and the FCC. Further, the NNTRC requests that the regulations be modified to allow more flexibility for Tribes in build-outs and other activities where doing business on reservations is far more difficult and time consuming.

⁷⁴ See ONAP's 2012 Report, available at transition.fcc.gov/cgb/onap/ONAP-AnnualReport03-19-2013.pdf.

Respectfully submitted,

**NAVAJO NATION TELECOMMUNICATIONS
REGULATORY COMMISSION**

By: _____/s/_____
James E. Dunstan
Mobius Legal Group, PLLC
P.O. Box 6104
Springfield, VA 22150
Telephone: (703) 851-2843



Counsel to NNTRC

By: _____/s/_____
Brian Tagaban
Executive Director
P.O. Box 7740
Window Rock, AZ 86515
Telephone: (928) 871-7854

By: _____/s/_____
Kandis Martine
Navajo Nation Department of Justice
P.O. Box 2010
Window Rock, AZ 86515
Counsel to NNTRC

Dated: September 16, 2013